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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/627,531	07/28/2000	Stephen A. Berry	ARC2914C1	3299

7590 10/21/2002
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EXAMINER

FUBARA, BLESSING M

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 10/21/2002 10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n N .

09/627,531

Applicant(s)

BERRY ET AL.

Examiner

Blessing M. Fubara

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Examiner acknowledges receipt of amendment B filed 07/08/02.

Claim Rejections - 35 USC § 112

1. The rejection of claims 1 and 3-45 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is withdrawn because amendment to the claims overcomes the rejection.

Claim Rejections - 35 USC § 102

2. Claims 1, 3-7, 15, 22, 23, 27-29, 36 and 42-45 remain rejected under 35 U.S.C. 102(b) as being anticipated by Clark et al. (US 5,374,620).

Applicants argue that Clark does not teach viscous single-phase non-aqueous vehicle and that the rejection is a hindsight reading of Clark where compounds are pulled out of a long lists of compounds.

3. Applicants' arguments filed 07/08/02 have been fully considered but they are not persuasive.

The claims are broadly directed to vehicle comprising two components selected from the group consisting of solvent, surfactant and polymer and the two components that make up the vehicle are not the same. A viscosity of about 1,000 to about 10,000,000 poise is claimed. Although a viscous vehicle is claimed, said viscous vehicle is a mixture of any two of solvent, surfactant and polymer so that any formulation of a mixture of any two of solvent, polymer and surfactant would inherently be viscous and have the viscosity within the broad range of about

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1,000 to about 10,000,000 poise. There is nothing in the generic claims that makes the claims distinct from the prior art. Although, the prior art does not specifically state viscous and single-phase and non-aqueous, a composition or formulation that comprises a surfactant and a polymer or surfactant and solvent or solvent and polymer would inherently have the properties claimed. No specific surfactant or polymer or solvent is claimed in the generic claims to set the claimed invention apart from the prior art. There is no hindsight in reading the broad generic claim that is directed to a vehicle comprising two or at least two of or three of polymer, surfactant and solvent.

4. Claims 1, 3-7, 15, 22, 23, 27-29, 36 and 42-45 remain rejected under 35 U.S.C. 102(b) as being anticipated by Sparks et al. (US 4,952,402).

Applicants argue that the citation of Sparks as a 102(b) reference is not appropriate because Sparks does not teach non-aqueous viscous single-phase vehicle.

5. Applicant's arguments filed 07/08/02 have been fully considered but they are not persuasive.

The claims in the application are directed broadly to a vehicle that is made up of two of solvent, polymer and surfactant or of at least two of solvent, polymer and surfactant or of three of solvent, polymer and surfactant and in each of the case the components that make up the vehicle are not the same. There is no claim to a specific solvent or polymer or surfactant that would make the vehicle viscous and single-phase and non-aqueous. The scope of the broad generic claims is such that any combination of solvent, polymer and surfactant would be non-aqueous, viscous and single-phase and the claimed combination or mixture of solvent and polymer and surfactant is not distinct from the prior art. Although, the prior art does not

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specifically state single phase and viscous, the composition of the prior art is inherently viscous and single phase because the prior art teaches a composition comprising solvent, surfactant and polymer. The prior art reads on the broad generic claims.

Regarding the argument on the powder of the prior art and liquid of the invention, it is noted that applicants are arguing for limitations that are not claimed.

Double Patenting

The provisional rejection of claims 1, 2-8, 10, 12 and 15-45 under 35 USC 101 is withdrawn because the claims in the co-pending application are amended. Examiner thanks applicants for acknowledging the rejection.

However, claims 1 and 3-48 remain provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 8-11, 15-18, 21-23, 27-32 and 34-38 of co-pending Application No. 09/497,422. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between the two applications is that in the co-pending application, the generic claim teaches the ratio of the components while the ratio of the components is recited in dependent claims in the examined application, see claim 1 and 8 of the examined application and claim 8 of the co-pending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

6. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicants' cooperation is requested in correcting any errors of which applicants may become aware in the specification.

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7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is 703-308-8374. The examiner can normally be reached on 7 a.m. to 3:30 p.m. (Monday to Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3592 for regular communications and 703-305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Blessing Fubara
October 17, 2002

THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600